been very generally applied to future-acquired choses in action. *Toilby v. Official Receiver* (1888) 13 App. Cas. 523; *Union Trust Co. v. Bulkely* (1907, C. C. A. 6th) 150 Fed. 510. In view of its doctrine as to chattels, Massachusetts has gone a long way in upholding assignments of future wages based on the expected continuance of an existing employment, though the employment is terminable at will. *Boylen v. Leonard* (1861) 2 Allen 407. An analogy might possibly have been drawn between wages to be earned under an existing but indefinite employment, and book accounts to arise in the natural course of an existing business. In refusing to draw such an analogy the court has made it clear that the doctrine of the wages cases is not to be extended, and the result is to be commended in so far as it tends toward the consistent application of the same rule to all classes of future-acquired personalty.

M. B.

CONTRACTS—ILLEGALITY—COLLATERAL CONTRACT.—An architect sued upon a contract with the defendants for services in the preparation of plans and specifications for a building. The building was to contain a motion picture theatre and also dwellings, bathhouse, and stores in the cellar. A statute provided that, "No portion of any building used for moving pictures hereafter erected . . . shall be occupied or used as a dwelling or tenement house, apartment house, hotel, or department store." Act of June 9, 1911 (P. L. 746). *Held,* that the architect was a party to an agreement to do an unlawful act and hence could not recover. *Medoff v. Fisher et al.* (1917, Pa.) 101 Atl. 471.

A collateral contract may be so far removed from the unlawful object of one of the parties as to be itself legal. *Rogers v. Waller* (1817, Tenn.) 4 Hayw. 205. Some Courts have held that where the illegal act ultimately contemplated is greatly opposed to public policy, mere knowledge on the part of the contractor is sufficient to make the collateral contract unenforceable. *Hanauer v. Doane* (1870) 12 Wall. 342 (treason); *Pearce v. Brooks* (1866) L. R. 1 Ex. 213 (prostitution). On the other hand where the illegal act intended by one is a crime of minor importance, mere knowledge by the other of such intention does not make the contract unenforceable by the latter. *Brooks v. Martin* (1863) 2 Wall. 70; *Thomas v. Brady* (1848) 10 Pa. St. 164. Yet the distinction between great and small crimes is at best hard to draw. Where, however, the plaintiff has participated in the intent or has aided and abetted its fulfilment, he cannot enforce his contract, irrespective of the magnitude of the offense intended. *Rose v. Mitchell* (1881) 6 Colo. 102; *Graves v. Johnson* (1892) 156 Mass. 211, 30 N. E. 818; (1901) 179 Mass. 53, 60 N. E. 383; *Webber v. Donnelly* (1876) 33 Mich. 469. If the drawing of the plans is to be regarded as a participation in the intent or as aiding and abetting the ultimate illegal act, the principal case is clearly sound.

F. C. H.

CONTRACT—PERFORMANCE BY INSTALMENTS—ANTICIPATORY BREACH.—An instalment contract provided that the seller should deliver coal daily from December 28, 1909, to March 30, 1910, and that the buyer should pay before the tenth of each month for the coal delivered during the previous month. On January 10, the purchaser failed to pay for the December coal and the seller at once stopped deliveries. The payment was made and accepted on January 15 at which time the vendor gave notice of cancellation. Coal delivered from January 1 to January 9 remained unpaid for even after the tenth of February. Action was brought by the buyer to recover for failure to deliver the rest of the coal. *Held,* that the failure of the plaintiff to make proper payments on the contract after the repudiation was fatal to his cause of action. *Chicago Washed Coal Co. v. Whitsett* (1917, Ill.) 116 N. E. 115.

The decision might have been rested on the plaintiff's first breach under the prevailing American rule which treats as vital a default in one instalment, though not accompanied by insolvency or repudiation as required by English cases. *Rugg v. Moore* (1885) 110 Pa. St. 236, 1 Atl. 320; Wald's Pollock, *Contracts* (Williston's ed.) 332, note; cf. *Freeth v. Burr* (1874) L. R. 9 C. P. 208; *Mersey Steel & Iron Co. v. Naylor* (1884) 9 A. C. 434. The court, however, did not discuss this point, but assuming the defendant's failure to deliver coal as the first "vital breach," saw only two courses open to the plaintiff if he wished to recover for loss of the contract. He could "treat the contract as terminated" and sue at once, or treat it as subsisting and sue at the end of the term. But in the latter case, he had to show complete performance on his part and keep the contract alive for the benefit of all parties. This is the English doctrine of anticipatory repudiation. *Hochster v. De la Tour* (1852, Q. B.) 2 E. & B. 678. Its application to an actual breach may be attributed to the peculiar Illinois rule that, though a breach in one instalment, without repudiation, excuses the other party from going on, he cannot, after ceasing performance on this ground, recover damages for the loss of the contract. *Keeler v. Clifford* (1897) 165 Ill. 544, 46 N. E. 248. Hence the court apparently considered that the plaintiffs' rights rested not on the defendant's breach, but on the accompanying repudiation. This seems an unfortunate departure from the general rule that any actual breach which excuses further performance gives an immediate right of action for loss of the entire contract. *Pierce v. Tennessee etc. Co.* (1898) 173 U. S. 1, 19 Sup. Ct. 335; Wald's Pollock, *Contracts* (Williston's ed.) 363, n. 20.

M. B.

CONTRACTS — THIRD PARTY BENEFICIARY — BOND TO SECURE PAYMENT OF MATERIAL MEN.—The defendant, as surety, gave a bond to the Passaic Valley Sewerage Commissioners to secure the performance of a building contract. The bond was conditioned to be void, "if the contractor shall pay for all labor and materials furnished and shall perform all the obligations of his contract." The plaintiff, having furnished materials, sued upon the bond. *Held,* that the plaintiff was not a beneficiary within the meaning of a statute (Comp. St. 1910, p. 4059, sec. 28) giving a right of action to third parties for whose benefit a contract is made, the bond being solely to indemnify the obligee. *Standard Gas Power Corp. v. New England Casualty Co.* (1917, N. J. Ct. Err.) 101 Atl. 281.

A third party beneficiary is allowed to sue in New Jersey, whether he is a creditor or a donee beneficiary. *Berry v. Doremus* (1863, Sup. Ct.) 30 N. J. L. 399; *Joslin v. New Jersey Car Spring Co.* (1873, Sup. Ct.) 36 N. J. L. 141; *Whitehead v. Burgess* (1897, Sup. Ct.) 61 N. J. L. 75. The court in the principal case denies a remedy to the plaintiff solely on the ground that he was not intended as a beneficiary. As a general proposition, public property is not the subject of a mechanic's lien. *Frank v. Hudson Co.* (1877, Sup. Ct.) 39 N. J. L. 347. If such were the case here the plaintiff should have been given the right to sue as the sole beneficiary; for the obligee would then have no interest of his own to protect by securing payment of the material men, and the latter must have been intended as beneficiary. *Baker v. Bryan* (1884) 64 Ia. 561, 21 N. W. 83; *King v. Downey* (1899) 24 Ind. App. 262, 56 N. E. 680. By statute in New Jersey, however, a mechanic's lien on public property is given. *Commissioners v. Fell* (1894, Ch.) 52 N. J. E. 689, 29 Atl. 816; Act of Mar. 30, 1892 (3 Comp. St. p. 3315) P. L. 1892 p. 369, as amended P. L. 1909 p. 260. Under such a statute it is a reasonable inference that the bond is one of indemnity to protect the obligee against loss that might result from the filing of liens. This tends to show that the bond in the principal case was not in fact made for the benefit of the material men. In other jurisdictions material men have been allowed to